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CASE NUMBER: 2019CV30973

DISTRICT COURT, CITY AND COUNTY OF  
DENVER, COLORADO  
1437 Bannock Street  
Denver, Colorado 80202

JOHN B. COOKE, Senator, ROBERT S. GARDNER,  
Senator, CHRIS HOLBERT, Senate Minority Leader,

Plaintiffs,

v.

CINDI MARKWELL, Secretary of the Senate, and  
LEROY M. GARCIA, JR., President of the Senate

Defendants.

▲ COURT USE ONLY ▲

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Case Number:

Div.:

**VERIFIED COMPLAINT FOR EXPEDITED DECLARATORY RELIEF**

John Cooke and Robert (Bob) Gardner as Colorado State Senators, and Chris Holbert as Colorado Senate Minority Leader, by and through their attorneys, Brownstein Hyatt Farber Schreck, LLP, alleges as follows for their Verified Complaint for Declaratory Relief:

## JURISDICTION & VENUE

1. This Court has jurisdiction over the subject matter of this action pursuant to Colo. Const. art. V, § 22, Colo. Rev. Stat. § 13-51-101 *et seq.*, and Colo. Rev. Stat. § 13-51-106.
2. Venue is proper in this Court pursuant to Colo. R. Civ. P. 98(b)(2).

## PARTIES

3. Plaintiff John Cooke is a Senator representing the 13th Senate District. Senator Cooke is a primary Senate sponsor of House Bill 19-1172 concerning amendments and reorganization of Title 12 of the Colorado Revised Statutes dealing with laws administered by the Department of Regulatory Agencies (“HB 1172”).

4. Plaintiff Robert Gardner is a Senator representing the 12th Senate District. Senator Gardner is a primary Senate sponsor of HB 1172.

5. Plaintiff Chris Holbert is a Senator representing the 30th Senate District. Senator Holbert is the Colorado Senate Minority Leader. In this capacity, Senator Holbert represents the 16 members of the Minority Party (Republican) Caucus of the Colorado Senate (collectively, the “Senate Minority”).

6. Defendant Cindi Markwell (the “Senate Secretary”) is the Secretary of the Colorado Senate (the “Senate”). The Senate Secretary is the Senate Parliamentarian and the head of the nonpartisan Senate Services Staff. The chief administrative officer of the Senate, managing, *inter alia*, all aspects of the legislative process.

7. Defendant Leroy Garcia is a Senator representing the 3rd Senate District. Senator Garcia is the President of the Senate. In this capacity, Senator Garcia is the presiding official of

the Senate, managing, *inter alia*, all aspects of the legislative process. Senator Garcia is referred to in this Verified Complaint as the “Senate President.”

## FACTUAL ALLEGATIONS

### **Colorado Constitution Article V, Section 22**

8. The Colorado Constitution (“the Constitution”) was drafted on March 14, 1876 and adopted by Colorado’s electorate on July 1, 1876. The Constitution took effect upon Colorado’s admission to the Union on August 1, 1876.

9. From the time of its drafting, article V of the Constitution has governed the Legislative Department of Colorado’s government, which it vests in the General Assembly.

10. The General Assembly is comprised of two houses: Colorado’s House of Representatives and Senate.

11. Since its drafting and adoption, article V has specified requirements for subjects ranging from the qualification of Members of the General Assembly to when Laws passed by the General Assembly generally take effect. *See* Colorado Const. art. V, §§ 4 and 19.

12. Article V, section 22 of the Constitution provides as follows:

*Every bill shall be read by title when introduced, and at length on two different days in each house; provided, however, any reading at length may be dispensed with upon unanimous consent of the members present. All substantial amendments made thereto shall be printed for the use of the members before the final vote is taken on the bill, and no bill shall become a law except by a vote of the majority of all members elected to each house taken on two separate days in each house, nor unless upon its final passage the vote be taken by ayes and noes and the names of those voting be entered on the journal.*

(emphasis added).<sup>1</sup>

13. This requirement is mandatory. If either house violates this requirement in enacting a law, the law so enacted is invalid. *In re: House Bill 250*, 57 P. 49, 50 (Colo. 1889).

14. The object of the requirement that every bill be read “at length on two different days in each house” is to “prevent, so far as possible, fraud and trickery and deceit and subterfuge in the enactment of bills, and to prevent hasty and ill-considered legislation.” *Id.*

#### **HB 1172**

15. On February 26, 2019, HB 1172 passed the Colorado House of Representatives. It was introduced in the Senate the next day by Senators Cooke and Gardner as its primary Senate sponsors.

16. The Senate President assigned HB 1172 to the Senate Committee on Judiciary the same day.

17. The Senate Committee on Judiciary unanimously referred HB 1172 to the Committee of the Whole—that is the entire Senate sitting in its capacity as a committee of the whole—on March 4, 2019.

18. HB 1172 was introduced for its second reading in the Senate yesterday, March 11, 2019. A Member of the Senate asked for the unanimous consent of the members present to waive reading the bill at length. Under Senate Rule 11, the unanimous consent to dispense with

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<sup>1</sup> The Constitution originally required three readings and did not permit the members present to dispense with the reading. See Authenticated Original Colorado State Constitution (available at: [https://www.colorado.gov/pacific/sites/default/files/CO\\_Constitution\\_150dpi\\_Signed.pdf](https://www.colorado.gov/pacific/sites/default/files/CO_Constitution_150dpi_Signed.pdf)).

the reading of the bill in full is presumed, unless a Senator requests the reading of the bill in full. Senate Rule 11(a) (available at: <http://leg.colorado.gov/house-senate-rules>).

19. Senator Cooke exercised his right under the Constitution and Rule 11(a) and requested that the bill be read at length as required under article V, section 22.

20. Accordingly, at approximately 9:35 am Senate staff began reading HB 1172. Initially, the bill was read by a single staffer at a fast, but intelligible pace.

21. After approximately three and a half hours, the Senate Secretary directed Senate staff to set up five laptop computers running a program called Nuance Power PDF.

22. Among other things, Nuance Power PDF allows a computer to automatically read text from a document loaded into the program.

23. The Senate Secretary directed Senate staff to set each of the five computers to read a different section of HB 1172 and to have the computers do so simultaneously at the maximum speed permitted by Nuance Power PDF.

24. The reading resumed using the five computers at approximately 1:15pm at a rate of approximately 650 words per minute.

25. The simultaneous reading by five computers at this speed was incomprehensible. It was impossible to understand the words being read by any one of the six computers, let alone to understand those being read by all of them at once.

26. Indeed, the *Boulder Daily Camera* reported that the reading by the computers was at a speed “far faster than humans can understand.” Anna Staver, “Computers zip through 2,000-page bill after Senate Republican forces its reading” *Boulder Daily Camera*, March 11, 2019, at

[http://www.dailycamera.com/ci\\_32506035/republicans-halt-work-colorado-senate-2-000-page](http://www.dailycamera.com/ci_32506035/republicans-halt-work-colorado-senate-2-000-page),  
(last visited March 11, 2019).

27. Senate Republican Chief of Staff, Timothy P. Griesmer objected to this method of reading HB 1172 on behalf of Senators Cooke and Gardner and on their behalf, asked the Senate Secretary to have the bill read in an intelligible manner.

28. The Senate Secretary rejected Senator Cooke and Senator Gardner's requests and suggested that Senator Holbert contact the Senate President.

29. At approximately 3:15 pm, Senator Holbert on his own behalf and on behalf of the Senate Minority, requested the Senate President to permit the Secretary to slow the reading of HB 1172 to an intelligible pace. The Senate President rejected his request.

30. At approximately 5:30 pm, the five computers concluded reading HB 1172 and the Senate resumed its business.

31. HB 1172 was laid over on second reading without a vote. It is currently scheduled to be re-considered upon second reading tomorrow, March 13, 2019.

32. On information and belief, the Senate President intends to have the Senate Journal record that that HB 1172 was read at length as required by article V, section 22. Senators Cooke and Gardner intend to object to any entry in the Senate Journal to this effect.

**FIRST CLAIM FOR RELIEF**  
**(Colo. Const. art. V, § 22)**

33. Plaintiffs incorporate and reallege the allegations of paragraphs 1-32 above.

34. Article V, section 22 requires that absent unanimous consent of all members present every bill shall be read at length twice in each house of the General Assembly.

35. Senator Cooke withheld his consent to dispensing with the reading of HB 1172 at length at second reading of HB 1172 in the Senate, as a result it was required to be read at length.

36. The requirement that a bill be read at length is not met when the bill is read in such a manner as to be rendered unintelligible to a human listener.

37. The actions of the Senate Secretary and the Senate President causing different sections of HB 1172 to be read simultaneously by five computers at an incomprehensible speed violated the article V, section 22 of the Colorado Constitution.

**SECOND CLAIM FOR RELIEF**  
**(Declaratory Judgment Pursuant to Colo. Rev. Stat. § 13-51-106)**

38. Plaintiffs incorporate and reallege the allegations of paragraphs 1-37 above.

39. Colo. Rev. Stat. § 13-51-106 provides in pertinent part that “[a]ny person ... whose rights, status, or other legal relations are affected ... may have determined any question ... and obtain a declaration of rights, status, or other legal relations thereunder.”

40. As set forth above, Senators Cooke, Gardner and Holbert have suffered an injury in fact to their legally protected interest of their right to insist upon the reading of HB 1172 at length as required by article v, section 22 of the Constitution.

41. Declaratory relief is required, as there is a presently existing controversy regarding the constitutionality of the Defendants' actions, and the Defendants are likely to repeat such actions as soon as the third reading of HB 1172.

42. Pursuant to Colo. Rev. Stat. § 13-51-106 and Colo. R. Civ. P. 57, Senators Cooke, Gardner and Holbert request a determination that the actions of Defendants violated the Constitution, and the purported reading at length of HB 1172 upon second reading on March 11, 2019 was ineffective and that unless it is properly read at length or unanimous consent of the

members present to waive such reading is validly obtained, HB 1172 will, if passed, be null and void.

43. Plaintiffs request an expedited determination pursuant to Colo. R. Civ. P. 57(m). HB 1172 is scheduled for third reading in the Senate on Wednesday, March 13, 2019. As it has already been adopted by the House of Representatives, there is real risk, absent this Court's intervention that HB 1172 will be passed in a manner that renders it ineffective and unconstitutional. Therefore, time is of the essence.

#### **PRAYER FOR RELIEF**

WHEREFORE, the Plaintiffs pray this Court order relief as follows:

1. Set an expedited determination pursuant to Colo. R. Civ. P. 57(m);
2. Declare pursuant to Colo. Rev. Stat. § 13-51-106 and Colo. R. Civ. P. 57, that the actions of the Defendants to read HB 1172 at length using five computers reading different portions of the bill at the same time at an incomprehensible speed is invalid as violative of Colo. Const. art. V. § 20 and § 22b;
3. Declare the Secretary of the Senate must, upon a Member's objection to dispensing with the article V, section 22 requirement, read legislation, including HB 1172 in an intelligible manner and at an understandable speed;
4. Enter an order restraining and enjoining Defendants and any person or entity acting in concert or participation with them from
  - A) Refusing, upon a Member's objection to dispensing with the article V, section 22 requirement, to read legislation, including HB 1172 univocally or otherwise in an intelligible manner and at an understandable speed;

B) Passing HB 1172 in violation of article V, section 22 by failing to read the bill at length on two consecutive days unless the Members present dispense with such reading by unanimous consent;

5. Enter such other and further relief as may be appropriate.

Dated March 12, 2019.

Brownstein Hyatt Farber Schreck, LLP

By: /s/ Christopher O. Murray  
Christopher O. Murray, #39340

Statecraft Law, PLLC

By: /s/ Michael Francisco  
Michael Francisco, #39111

*Attorneys for Plaintiffs*

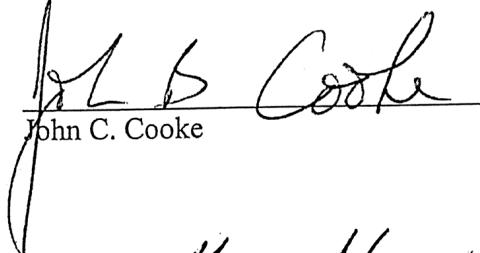
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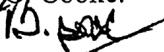
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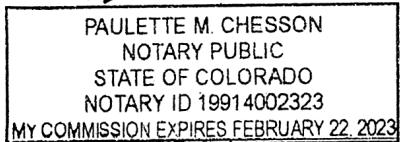
**VERIFICATION**

STATE OF COLORADO )  
COUNTY OF Denver) ss.

I, John C. Cooke, having been first duly sworn under oath, state that I am a plaintiff in the within action, that I have read the foregoing VERIFIED COMPLAINT FOR EXPEDITED DECLARATORY RELIEF and that the facts set forth therein are true and correct to the best of my knowledge and belief.

  
John C. Cooke

SUBSCRIBED AND SWORN to before me this 12<sup>th</sup> day of March 2019, by  
John  Cooke.



My commission expires: 2/22/23

  
Paulette M. Chesson  
Notary Public

VERIFICATION

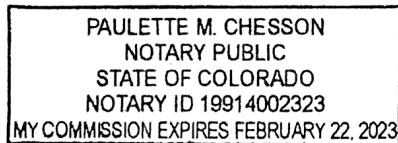
STATE OF COLORADO )  
COUNTY OF Denver) ss.

I, Robert S. Gardner, having been first duly sworn under oath, state that I am a plaintiff in the within action, that I have read the foregoing VERIFIED COMPLAINT FOR EXPEDITED DECLARATORY RELIEF and that the facts set forth therein are true and correct to the best of my knowledge and belief.



Robert S. Gardner

SUBSCRIBED AND SWORN to before me this 18<sup>th</sup> day of March 2019, by  
Robert S. Gardner.



My commission expires: 2/22/23



Paulette M. Chesson  
Notary Public

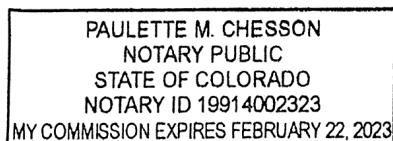
VERIFICATION

STATE OF COLORADO )  
COUNTY OF Denver) ss.

I, Chris Holbert, having been first duly sworn under oath, state that I am a plaintiff in the within action, that I have read the foregoing VERIFIED COMPLAINT FOR EXPEDITED DECLARATORY RELIEF and that the facts set forth therein are true and correct to the best of my knowledge and belief.

Chris Holbert  
Chris Holbert

SUBSCRIBED AND SWORN to before me this 13<sup>th</sup> day of March 2019, by  
Chris Holbert.



My commission expires: 3/22/23

Paulette M. Chesson  
Notary Public